IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 581 OF 2004
IN
FIRST APPEAL NO. 80 OF 1991

1. Shri Laximan Narayan Mandrekar,

2. Shri Shashikant Narayan Mandrekar,

Both residents of Padocem, Satari, Goa. ..... Applicants.

V/s.

1. State of Goa
through the Chief Secretary,
Secretariat, Panaji, Goa.

2. The Special Land Acquisition Officer,
(North), (Shri Lucas Francis Botelho),
Irrigation Department,
Duler, Mapusa Goa. ..... Respondents.

Mr. S.S. Kantak, with Ms. Rakhi Chodankar, Advocates for the applicants.

Mr. H.R. Bharne, Government Advocate for the respondents.

CORAM : B.H. MARLAPALLE, J.

DATE : DECEMBER 16, 2004.

ORAL ORDER :

Heard Mr. Kantak, with Ms. Rakhi Chodankar, the leaned Counsel for the applicants and Mr. H.R. Bharne, the learned

Government Advocate for the respondents. This is an application for condonation of delay of 9 years and 10 months for restoration of the first appeal No.80/91, which was dismissed in default by order dated 9.11.1994.

2. In First Appeal No. 80/91, an Award passed by the reference Court under Section 18 of the Land Acquisition Act, 1894 was challenged. The land acquired totally admeasured 2600 sq. metres and the Notification under Section 4 of the Act was published on 4.1.1985. The Land Acquisition Officer had awarded compensation at the rate of Rs.2/- per sq. metre for the land, Rs.14,480/- in respect of 80 cashew trees and Rs.1800/- in respect of two mango trees. In the enhancement application though the market rate was claimed at Rs.20/- per sq. metre for the land, during the course of arguments, it appears that the claim was scaled down to Rs.8/- per sq. metre. But the learned District Judge did not find any evidence in support of the claim for enhancement and the application was rejected.

3. The First Appeal was admitted by this Court on 26.9.1991. Record and proceedings in Land Acquisition Case No.76/86 was received on 18.12.1991 and by then the respondents were duly served. The Registry issued the notice dated 15.2.1994

under Rule 12(v) of Chapter IX of the Bombay High Court Appellate Side Rules, 1960 on the learned Advocate for the appellants on 2.3.1994. The compliance was, therefore, required to be done within one month from 2.3.1994, so as to prepare the paper-book. The learned Advocate did not take any steps even during the extended period under Rule 12(vi) of Chapter IX and, therefore, the Senior Superintendent passed an order on 1.8.1994 to list the appeal before the Court. On 14.10.1994, when the appeal was called out for compliance of the requirements of Rule 12(v) and (vi) of Chapter IX of the Rules, the learned Advocate for the appellants undertook to comply with the requirements within two weeks. This Court noted down the undertaking by way of a last chance and further noted that failing to remove the office objections, the appeal shall stand dismissed automatically for want of prosecution. No steps were taken within the stipulated period of two weeks and, therefore, the Registry noted on 9.11.1994 that the appeal was dismissed automatically.

4. The application for restoration has been filed belatedly and the delay is of 9 years and 10 months as noted by the Office. Mr. Kantak, the learned Advocate for the applicants by referring to the decisions of the Supreme Court in the case of **N. Balakrishnan v M. Krishnamurthy,** (1998) 7 SCC 123 and **Ram Nath Sao alias Ram**

Nath Sahu and ors. V Gobardhan Sao and ors., (2002) 3 SCC 195, prayed for condonation of delay in filing the restoration application. In the first case, the delay caused was of 883 days and in the second case, the period of delay varied from 3 to 5 years and in the respective cases, the Apex Court had noted that the delay was required to be condoned in the facts and circumstances of those cases.

5. The respondents have filed affidavit-in-reply and opposed the application. Mr. Bharne, the learned Government Advocate has relied upon the decisions in the case of **Shanti Devi v. State of Haryana and ors.,** (1999) 5 SCC 703; and **Chhabi Kulavi and anr. V Ganesh Chandra Mondal,** (2001) 9 SCC 294. Mr. Bharne further submitted that the delay for whatever duration, must be explained and unless this Court is satisfied that there are good and sufficient reasons to condone the delay, the application for condonation cannot be allowed. In the instant case, it is stated that due to inadvertence the costs of the paper-book remained to be paid and the appeal was dismissed for non-prosecution. In the first week of August, 2004, the applicants approached their Lawyer to find out the progress of their case and upon inquiry from the Registry, the applicants came to know about the order passed by this Court. It was only then that the applicants came to know that the costs of

the paper book had remained to be paid, resulting in dismissal of the appeal. These are, in short, the reasons putforth for condoning the delay.

6. The record, briefly described hereinabove, indicates that after the notice was given by the Registry and it was received by the learned Advocate for the appellants on 2.3.1994, no steps were taken till 1.8.1994 though the time provided for taking steps with an outer limit was of two months, and even thereafter no steps were taken till the appeal was listed before the Court on 14.10.1994 when the Court accepted the undertaking to remove the office objection within two weeks. The Registry noted that even after two weeks, the deficiencies were not removed. The writ was issued to the Court below on 16.2.1995 for returning the record and proceedings. The reasons furnished in the application do not make out a case for condonation of delay. Mr. Kantak submitted that by awarding costs, the delay should be condoned and in any case, the claim finally made for enhancement would not put a very high burden on the State exchequer even if the appeal is allowed. These are not the considerations which weigh in condoning the delay of 9 years and 10 months. Even if the claim putforth was a statutory claim from a particular date, the fact remains that the order of dismissal has been passed almost about 10 years back. The applicants have

received the amount what was fixed in the Award passed by the Land Acquisition Officer.

7. Taking into consideration all the cumulative circumstances, I am satisfied that this application does not deserve to be allowed. Hence, the application is rejected.

B.H. MARLAPALLE, J.

ssm.